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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC-00-067-52518 Office: California Service Center

Date: JAN 22 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

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INSTRUCTIONS:

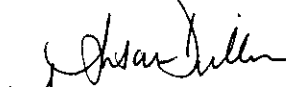
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a real estate development and construction business with two full-time and 14 contracted employees and a projected gross annual income of \$3 million. It seeks to employ the beneficiary as a civil/architectural engineer for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the beneficiary does not hold the required license from the State of California in civil engineering or architecture.

The issue to be examined in this proceeding is whether the beneficiary is qualified to perform the services of a specialty occupation, which the initial I-129 application indicates is that of civil/architectural engineer.

On appeal, counsel states, in part, that the proffered position was inadvertently identified as that of a civil/architectural engineer rather than project director. Counsel further states that the proposed duties of managing all aspects of the petitioner's development projects and working closely with independent civil engineering companies and architectural design firms to ensure

compliance with project guidelines and budgets, are consistent with the duties of a project director. Counsel additionally states that the beneficiary's general contractor's license from the State of California, his extensive employment experience, and his educational background qualify him for the proffered position.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

It is determined that the petitioner has not complied with the terms of the labor condition application because the title of the proffered position is not what is reflected on the application. The record contains no evidence that an amended labor condition application was filed pursuant to 8 C.F.R. 214.2(h)(2)(i)(E). It is also noted that the file contains no evidence that an amended petition with fee was filed along with the new labor condition application. As such, the record as it is presently constituted indicates that the proffered position is that of a civil/architectural engineer.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary holds a baccalaureate degree in engineering conferred by a Korean institution. A credentials evaluation service found the beneficiary's foreign education equivalent to a bachelor of science degree in architecture from an accredited university in the United States. The beneficiary also holds a general contractor's license from the State of California.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

...planning, drafting and designing structures, and directing construction of residential buildings as well as roads, and industrial construction. In addition, he will be responsible for analyzing reports, maps, drawings, blueprints, tests, and aerial photographs on soil composition, terrain, hydrological characteristics, and other topographical and geologic data to plan and design project.

...calculate cost and will determine feasibility of project based on analysis of collected data, applying knowledge and techniques of engineering, and advanced mathematics. He will prepare or direct preparation and modification of reports, specifications, plans, construction schedules, environmental impact studies, and designs for project...will be responsible for inspection of construction sites to monitor progress and ensure conformance to engineering plans, specifications, and construction and safety standards.

The record indicates that the proffered position is that of a civil/architectural engineer. A review of the Department of Labor's Occupational Outlook Handbook, at page 87, indicates that all 50 States and the District of Columbia require licensure for engineers whose work may affect life, health, or property, or who offer their services to the public. The record as it is presently constituted does not demonstrate that the beneficiary holds a license from the State of California in civil engineering or architecture. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.